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No. 9 Original

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1961

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGA-
TION DISTRICT, IMPERIAL IRRIGATION
DISTRICT, COACHELLA VALLEY COUNTY
WATER DISTRICT, METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA,
CITY OF LOS ANGELES, CALIFORNIA,
CITY OF SAN DIEGO, CALIFORNIA, AND
COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

MOTION OF THE UNITED STATES OF AMERICA FOR DETERMINA-
TION OF QUESTIONS OF LAW PRESENTED BY THE PLEADINGS IN
THE CAUSE AND THE REPORT OF THE SPECIAL MASTER

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 10 Original

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

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MOTION OF THE UNITED STATES OF AMERICA FOR DETERMINATION OF QUESTIONS OF LAW PRESENTED BY THE PLEADINGS IN THE CAUSE AND THE REPORT OF THE SPECIAL MASTER

The State of California ^{1/} moved this Court to join as defendants the States of New Mexico, Utah, Colorado and Wyoming. The matter was duly referred by this Court to the Special Master with instructions "to hear the parties and report with all convenient speed his opinion and recommendation as to whether the motion should

^{1/} References to the "State of California" or "California" throughout this Motion include all of the California defendants listed in the caption.

1 be granted." Pursuant to that instruction there was filed on
2 July 18, 1955, the "Special Master's Report on the Motion of the
3 California Defendants to Join as Parties the States of New Mexico,
4 Utah, Colorado and Wyoming." This Court allowed until October 20, 1955,
5 for the filing of exceptions to that Report. As of this date
6 exceptions have been filed by the State of Nevada and it is understood
7 that exceptions will be filed by the State of California.

8 There are presented to the United States of America by the
9 Report of the Special Master problems of great import. Absent
10 rulings by this Court upon basic and fundamental questions of law
11 stemming from the pleadings now before it, and the Report of the Special
12 Master, the United States of America cannot properly agree or disagree
13 with the Report. Reference in that regard is had to the analysis by
14 the Special Master of the character of the cause in question. There
15 it is declared that "In our view, it is a suit filed to quiet Arizona's
16 title to the use of a certain part of Lower Basin water. The share
17 claimed is set forth in the Complaint. To conclude what Arizona's
18 rights may be involves a consideration of equities; of the Colorado
19 River Compact; of water rights to which the Compact is subservient;
20 of rights subservient to said Act; of the California Limitation Act;
21 of the powers and actions of the Secretary of the Interior of the
22 United States, including contracts made by said Secretary; and
23 other matters relevant." ^{2/}

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25 2/ Special Master's Report on the Motion of the California Defendants
26 to Join as Parties the States of New Mexico, Utah, Colorado and
Wyoming, page 60, subdivision V.

1 Issue is not taken with the Special Master's conclusion
2 that this is a proceeding to quiet title. Attendant upon that
3 conclusion, however, are correlative propositions of law the resolu-
4 tion of which is essential to any determination as to the need for
5 the joinder of the sovereign States of Colorado, New Mexico, Utah
6 and Wyoming. There follows a review of those fundamental questions
7 of law.

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9 I.

10 The State of Arizona in its Bill of Complaint, seeking
11 to have quieted its title to rights to the use of water in the Colorado
12 River System, petitions among other things that the Colorado River
13 Compact, the Boulder Canyon Project Act, related laws, contracts
14 and documents be construed. California, however, denies that the
15 State of Arizona ratified the Colorado River Compact; denies that
16 Arizona is entitled at this date to claim rights pursuant to that
17 Compact. There is thus presented for resolution the basic question
18 of whether Arizona is entitled to participate as a party to the
19 Compact; a question referred to by the Special Master but which
20 remains unresolved. Necessarily if it is ultimately determined that
21 Arizona is not a party to the Colorado River Compact, its status in
22 the proceedings is materially changed. Similarly the status of the
23 United States of America will be changed as will be subsequently

24 3/ Answer of California Defendants to Petition of Intervention on
25 Behalf of the United States of America and Summary of the
26 Controversy, (Exhibit A) page 34, paragraph 24. See in that
connection Answer of Defendants to Bill of Complaint, Second
Affirmative Defense, pages 39 et seq.

1 emphasized. Moreover, a protracted trial involving complex factual ques-
2 tions might be abortive with present parties if California should be
3 sustained in its position respecting the State of Arizona in relation to
4 the Colorado River Compact. It is difficult to assess the change that
5 would transpire in this case if Arizona were declared not to be a party
6 to the Colorado River Compact. It cannot be fairly assumed, however,
7 that if it is declared that Arizona is not in fact a member of the Compact,
8 it will abandon any claim to the waters of the Colorado River System. Rather
9 it must be presumed that Arizona will assert a claim against the River
10 System as a whole. Under those circumstances there could be no final relief
11 awarded in this action without having all of the States of the Colorado
12 River System, without regard to the Compact, before this Court.

13 II.

14 Arizona in its Complaint requests an interpretation of the
15 Colorado River Compact in connection with these matters:
16 ^{4/}

17 "(1) Is the water referred to and affected
18 by Article III (b) of the Colorado River Compact
19 apportioned or unapportioned water? * * *

20 "(2) How is beneficial consumptive use to be
21 measured? Article III of the Compact does not appor-
22 tion water. Rather it apportions the beneficial
23 consumptive use of water. The Compact contains no
24 definition of beneficial consumptive use and does
25 not establish any method of measuring beneficial
26 consumptive use. * * *

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4/ Bill of Complaint, State of Arizona, page 25, Article XXII.

Should it ultimately be declared by this Court that Arizona is not a party to the Compact, there necessarily arises for consideration the matter of the propriety of presenting for resolution the matters set forth above. Quite possibly under those circumstances Arizona would claim rights on the theory of an equitable apportionment of the stream system in its entirety as distinguished from a claimant in the Lower Basin under the Colorado River Compact.

III.

If this Court should declare that Arizona is not a party to the Colorado River Compact the United States of America has an immediate concern respecting its international obligations to deliver water arising in connection with its treaty with the United Mexican States. ^{6/} Those international obligations, the Colorado River Compact provides are to be "supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, * * *." ^{7/} It is clear that if Arizona is not a party to the Compact the provision made for delivery of water to Mexico is radically changed presenting for determination in that connection the obligation of Arizona and all of the other States of the Colorado River System.

^{5/} Arizona v. California, et al., 298 U. S. 558 (1936).

^{6/} See Petition of Intervention on Behalf of the United States of America, page 12, Article XIII.

^{7/} Colorado River Compact, Article III.

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IV.

Correlative to the questions presented in paragraphs I, II and III above, arising from the status of Arizona under the Colorado River Compact, is another of extreme importance to the United States.

It has entered into contracts with the State of Arizona for the delivery to it of 2,800,000 acre-feet of water from the Colorado River.^{8/} California asserts that its contracts with the United

States of America are severally and collectively senior in time to the Arizona contracts.^{9/} It is patent that if the contracts between

the United States of America and the State of Arizona should fall by reason of the determination that Arizona is not a party to the Colorado River Compact, its claimed rights to the water in the Colorado River would be materially changed very probably presenting issues that could not be resolved without the presence of the parties California seeks to join.^{10/}

V.

Another fundamental question of law is presented by the Report of the Special Master. It is provided by Article VII of the Colorado River Compact,^{11/} that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes." Alluding to that quoted provision of

^{8/} Bill of Complaint, State of Arizona, Article XIII

^{9/} Answer of Defendants to Bill of Complaint, page 38.

^{10/} Answer of Defendants to Bill of Complaint, paragraph X, page 38.

^{11/} Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming, Appendix A, page 6a.

the Compact and related matters, the Special Master declares: "From this, it appears that the rights of the Indian tribes in the Upper Basin shall be satisfied solely from waters of the Upper Basin, and the rights of Indian tribes in the Lower Basin shall be satisfied solely from water appropriated to that Basin." ^{12/} Noteworthy in regard to the claims to rights to the use of water asserted by the United States of America on behalf of the Indians is the fact that they represent one of the largest claims to water from the stream system in question. ^{13/} It will be observed that the Special Master has not finally ruled on the question of law as to whether the claims of the Indians are to be satisfied from the Lower Basin or whether they are to be satisfied from the entire Colorado River Stream System. It must be assumed that the Special Master did not intend to declare as a matter of law that the rights of the Indians are subject to the Colorado River Compact. However, if the statement by the Special Master is interpreted to be a declaration that the Indians are subject to the Colorado River Compact irrespective of the explicit language of that document, there is presented for

^{12/} Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming, page 54.

^{13/} Petition of Intervention on Behalf of the United States of America, pages 56 and 57.

1 consideration the question of whether this Court will adopt that
2 conclusion as a matter of law. In either event, it is essential
3 before the United States of America can agree or disagree with
4 the language of the Special Master regarding the Indian claims,
5 that there be a definitive ruling on that very important issue.

6 If the Indian claims are held to be "against the river"
7 as distinguished from the Lower Basin as defined by the Colorado
8 River Compact, that conclusion would have far-reaching effect
9 upon the interests of all of the States in the Colorado River,
10 Stream System. Thus there is directly involved the construction
11 of the above quoted Article VII of the Colorado River Compact
12 and all that is implicit in such a construction. If Arizona
13 is declared not to be a party to the Compact, the questions
14 presented become even more pertinent.

15 VI.

16 These fundamental questions are of transcendent
17 importance in regard to all of the relief which has been sought
18 in this cause by the United States of America. In this complex
19 case there are necessarily other questions related to and independent
20 of those herein set forth. However, whether complete relief can
21 be had in this action on the basis of the parties presently before
22 the Court can be resolved only by the ultimate determination of
23 the legal questions which are here presented.
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1 WHEREFORE, the United States of America respectfully moves
2 this Court to consider the questions here presented and to order
3 briefs filed in connection with them and to declare the legal
4 principles which will govern in regard to them prior to a
5 determination as to whether the States of Colorado, New Mexico,
6 Utah and Wyoming should or should not be joined as parties to this
7 cause.

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9 S/ Herbert Brownell, Jr.

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11 HERBERT BROWNELL, Jr.
12 Attorney General
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October, 1955.